

- MUNICIPAL CODE OF THE CITY OF FRESNO
CHAPTER 1 - GENERAL PROVISIONS

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SEC. 1-401. TITLE.

This article shall be known as the "City of Fresno Administrative Hearing Procedure Ordinance" or "Administrative Hearing Ordinance."

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-402. FINDINGS.

- (a) The Council finds that there is a need to establish uniform procedures for administrative hearings conducted pursuant to the code.
- (b) It is the purpose and intent of the Council to ensure that the administrative hearing procedures afford due process of law as required under federal and state law.
- (c) Due process of law includes adequate notice, an opportunity to be heard by an impartial fact-finder, and an adequate explanation of the reasons justifying the administrative action.
- (d) The Council finds that it is important to establish procedures which efficiently, expeditiously and fairly resolve issues raised in administrative, regulatory or enforcement actions.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-403. APPLICABILITY.

Except where specifically provided otherwise in this Code, this article shall provide the procedures, rules and standards for all administrative hearings provided under this Code or administrative hearings provided under rules or regulations promulgated pursuant to this Code.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

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SEC. 1-404. RULES AND REGULATIONS.

The City Manager may adopt written rules, regulations, policies and procedures that are consistent with the intent or provisions of this article, as may be necessary or desirable to aid in the administration or enforcement of the provisions of this Code.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-405. HEARING OFFICER.

The City Manager shall appoint persons to serve as hearing officers under the following rules:

- (a) Permanent Hearing Officer. The City Manager may appoint a person or persons to serve as permanent hearing officers. Permanent hearing officers shall be hired under a contract with a minimum one year term. The hearing officer may not be terminated without cause and the basis of termination shall not be related to the outcomes of hearings. A permanent hearing officer may be appointed to hear all types of administrative hearings or may be appointed to hear a select category of hearings or a select number of hearings. A person may not be appointed to serve as a permanent hearing officer if he or she has served as a temporary hearing officer within a one year period.
- (b) Temporary Hearing Officer. The City Manager may appoint a person or persons to serve as temporary hearing officer on an as needed basis for those hearings in which the city does not have a permanent hearing officer or where the permanent hearing officer(s) is/are unable to serve because of the existence of a personal conflict or for practical reasons or where the Code otherwise requires appointment of a person to hear a particular class of hearings. The following persons may serve as temporary hearing officers:
 - (1) Any person willing to serve without compensation or valuable consideration or promise of future compensation or valuable consideration;
 - (2) Any person serving for compensation so long as that person has not previously served as a temporary hearing officer for the city within a one year period;
 - (3) A person serving for compensation who has previously served as a temporary hearing officer within the past year may serve as a temporary hearing officer upon written consent of the appellant or the person whose property or interest is the subject of the hearing after disclosure by the city of the person's prior service for the city, including, if requested, disclosure of the final determination of any prior decision(s) by the hearing officer;
 - (4) A person serving for compensation who has served as a temporary hearing officer within a year may serve without the written consent of the appellant where the person is randomly selected from a list or panel of at least four persons who have all agreed to serve as temporary hearing officers under such a random selection process;
 - (5) A salaried city staff member who regularly supervises at least ten people and who does not, and has not within the previous twelve months, directly supervised the division or unit of the staff member responsible for representing the city in the appeal and who has not participated in the order, citation, decision or determination being appealed may serve as a temporary hearing officer; or
 - (6) A State Administrative Law Judge under a contract with the Office of Administrative Hearings or an arbitrator employed by a private independent arbitration service, such as JAMS or the American Arbitration Association.

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- (c) Multiple Hearing Officers. Where more than one hearing officer, whether temporary or permanent, is available to hear the same administrative hearing, selection of the hearing officer shall be determined either by the terms of the hearing officer's contract or by random process.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-406. SERVICE OF PROCESS.

Service of any notice, hearing packet, or order under this article shall be by personal service or first class mail. The date of service shall be considered the date the notice, hearing packet or order was personally served or three days after the date of mailing. (Added Ord. 2005-14, § 49, eff. 4-9-05).

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-407. FILING A NOTICE OF APPEAL.

- (a) Standing. Only a person who has a legal existing interest in the property, right or entitlement subject to the city order, citation, decision or determination sought to be appealed from has standing and a right to appeal under this article. A notice of appeal that fails to allege standing may be rejected as defective.
- (b) Notice of Appeal. A notice of appeal shall be filed in writing in duplicate with the hearing officer within fifteen calendar days after the service of the order, citation, decision, or determination appealed from. The appeal shall be addressed to the hearing officer and shall contain the following:
 - (1) The name, address, and telephone numbers of the appellant;
 - (2) A statement describing the appellant's legal existing interest in the property, right or entitlement subject to the city order, citation, decision or determination sought to be appealed from;
 - (3) A brief description of the specific order, citation, decision, or determination being appealed;
 - (4) A statement of the relief sought;
 - (5) The reasons why such relief should be granted;
 - (6) A statement of the Appellant, "under penalty of perjury," that the facts stated in the appeal are true of the appellant's own knowledge, except as to matters which are not within the appellant's knowledge and are not of public record, and as to those matters that the appellant believes the facts stated to be true.
- (c) Late Appeals. Upon a showing of good cause, the hearing officer may, in his or her discretion, permit the filing of an appeal, or an amended appeal, after fifteen calendar days, in which case the appeal shall be considered in the same manner as if it had been timely filed.
- (d) Defective Notice of Appeals. If, in the opinion of the hearing officer, the appeal or an amended appeal fails to comply substantially with the requirements of this section, the hearing officer may give written notice of such insufficiency to the appellant at any time within fifteen calendar days after the appeal is presented, stating with particularity the defects or omissions therein. Failure of the appellant to file an amended appeal within fifteen calendar days of the date of service of such notice of insufficiency shall constitute a waiver of the appeal. Failure of the hearing officer to give notice of any insufficiency within fifteen calendar days shall result in the appeal being heard on its merits, without regard to any insufficiency.
- (e) Notice of Hearing. Upon receipt of an appeal, or if notice of insufficiency is given in accordance with this section, upon receipt of an amended appeal within the time specified, the hearing officer shall cause one copy to be stamped indicating the date of receipt thereof, and shall immediately forward

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the other copy to the officer or employee whose order, citation, decision, or determination is being appealed. The hearing officer shall set the appeal for hearing and shall give to the appellant and to the officer or employee whose order, citation, decision, or determination is being appealed not less than fifteen calendar days written notice of the date, time, and place of hearing. The appellant, or his/her authorized representative, may waive the fifteen calendar days written notice, so long as said waiver is in writing and received by the hearing officer. The notice of the hearing to the appellant shall include a statement as to the appellants' rights as provided in subsection [1-507\(c\)](#).

- (f) Stay of Proceedings. Unless otherwise provided by this Code, the filing of an appeal shall stay all proceedings in furtherance of the order, citation, decision, or determination appealed from until the determination of the appeal as provided herein.
- (g) Hearing Packet. Upon receipt of the copy of the notice of appeal from the hearing officer, the employee or officer who issued the order, citation, decision or determination shall prepare a hearing packet that forms the basis of the citation, order, decision or determination. The hearing packet shall be served either within seven calendar days (if service is by mail) or five calendar days (if personally served on the appellant) of the date set for the hearing.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-408. CONDUCT OF HEARING.

- (a) Continuance. At the hearing officer's discretion or upon good cause shown, the hearing officer may continue the hearing by written notice before the scheduled hearing or orally at or during the hearing.
- (b) Hearing. At the hearing, the officer or employee who issued the order, citation, decision, or determination or his or her designee shall present evidence in support of the findings or reasons upon which the order, citation, decision, or determination, was based. The appellant, or any individual authorized in writing to represent the appellant, may then present evidence in support of the contentions made in the notice of appeal. The hearing shall be informally conducted.
- (c) Rights of Parties. The parties and anyone who participates in a hearing may be represented by an attorney or other person of the parties' choice. The parties have a right to appear, testify, present evidence, examine and cross-examine witnesses, and present written or oral arguments. Additionally, the parties may request and the hearing officer may allow the parties to submit written briefs, either before, during or after the hearing.
- (d) Evidence. The rules of evidence provided by State statute in civil and criminal actions shall not apply, except that irrelevant and unduly repetitious evidence may be excluded in the hearing officer's discretion.
- (e) Scope. The scope of the hearing shall be limited to the order, citation, decision, or determination being appealed, the grounds for relief raised in the notice of appeal and any specific requirements of this Code. The hearing officer may expand the scope of the hearing on a finding that it is necessary to ensure a fair process.
- (f) Burden of Proof; Burden of Evidence. Except where otherwise provided in this Code, the burden of proof and production of evidence shall be with the city. Except where otherwise provided in the Code, the burden of proof shall be preponderance of the evidence.
- (g) Open to the Public. All hearings shall be open to the public. Any interested person shall have the right to speak at the hearing subject to the hearing officer's right to exclude irrelevant and unduly repetitious evidence. Notwithstanding the above, the parties have the right to petition the hearing officer and the hearing officer may in his or her discretion accept submission of evidence outside the presence of the public, if such evidence would not be disclosable under the Public Records Act, California Gov't Code §§ 6250, et seq.

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- (h) Waiver of Rights. The failure of the appellant or any interested party to raise an objection to the hearing officer either before or during the hearing of any defect in notice or procedure provided under the Code or at law or in equity shall be deemed a waiver of the defect. For purposes of a waiver of objection in this subsection, defect in procedure shall include a claim that the hearing officer is biased when facts regarding the claimed bias are known or readily discoverable by the appellant or interested party or have been published to the appellant or interested party by the city. An objection of bias of the hearing officer shall be raised to the City Manager.
- (i) Failure of Appellant to Appear. Unless otherwise provided in the Code, if the appellant fails to appear for the hearing at the time and place noticed, the hearing officer in his or her discretion may conduct the hearing to a conclusion or may dismiss the appeal. If the appeal is dismissed, the order, citation, decision, determination appealed from shall become final and effective on the date of the hearing. Upon a showing of good cause, the hearing officer may set aside his or her decision or dismissal upon the appellant's failure to appear and may reschedule the appeal for hearing.
- (j) Recording. The proceedings at the hearing shall be recorded to a cassette tape, a CD-ROM, a video tape, a DVD or similar media. In addition to any one of the above, the proceedings may also be recorded by a certified shorthand reporter. If an appellant requests a certified shorthand reporter the costs of the reporter shall be borne by the appellant.
- (k) Ex parte communication. Other than at the hearing, there shall be no direct oral communication between the parties and the hearing officer on any matter related to the hearing without both parties being present. Any written communication to the hearing officer by a party shall be copied and served to the other party.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-409. HEARING OFFICER AUTHORITY.

- (a) Order of Attendance or Production. At the request of either the city or the appellant, the hearing officer or the City Clerk shall, on behalf of the city, issue orders for attendance of witnesses at the hearing, or production of documents on a date certain. In no event shall the date for the production of documents be less than ten days after the date the order was issued. Failure by a party to comply with an order of attendance or production may be considered a violation of this Code and, at the petition of a party, the hearing officer may impose a civil fine of up to one hundred dollars (\$100) at the time of the hearing and may take such failure into consideration in making his or her determination of the hearing.
- (b) Subpoenas. At the request of either the city or the appellant, the hearing officer or the City Clerk shall, on behalf of the city, issue subpoenas for attendance of witnesses at the hearing or production of documents on a date certain. In no event shall the date for production of documents be less than ten days from the date the subpoena was issued. Disobedience of such subpoena or the refusal to testify, upon other than constitutional grounds, shall constitute a misdemeanor.
- (c) Inspection of Premises. The hearing officer may inspect the premises involved in the hearing at any time prior to a decision, to investigate or confirm the existence of the violation(s) or conditions which are on appeal, provided that:
 - (1) Consent is granted by a person with the lawful right to grant consent or an inspection warrant is obtained;
 - (2) Reasonable notice of such inspection is given to the owner before the inspection is made;
 - (3) The parties are given an opportunity to be present during the inspection;
 - (4) The hearing officer shall place in the record the material facts and the conclusions drawn from the inspection either orally at the time of the hearing or in writing after the hearing; and

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- (5) Each party then shall have a right to rebut or explain the matters so stated by the hearing officer for the record either at the hearing or by filing a written statement within ten calendar days after the hearing.
- (d) Oaths. The hearing officer shall have the power to administer oaths and affirmations.
- (e) Procedures. The hearing officer shall have the authority to establish procedures before or during a hearing consistent with this article and the Code for purposes of efficiency and order.
- (f) Review Authority. The hearing officer shall sit as the trier of fact and shall rule on questions of law and admissibility of evidence. The hearing officer may affirm, reverse, modify, or set aside the order, citation, decision, or determination appealed from or may delete or impose conditions as the facts and law warrant. The hearing officer may not increase a penalty or impose a harsher remedy beyond the penalty or remedy imposed under the order, citation, decision or determination being appealed.
- (g) Limitations. The hearing officer shall not have authority to waive any requirements of the Code or law.
- (h) Record keeper. The city shall maintain the administrative record of the hearing and make it available upon request by either party. The record shall be maintained for two years from the date the case is closed and no further appeals are available under the Code or at law.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-410. DECISION.

- (a) Decision. Unless otherwise agreed by the parties, within twenty-one days of the conclusion of the hearing, after the hearing officer has considered all evidence presented and the relevant standard of review, the hearing officer shall issue his or her decision of the appeal in writing. The decision shall include a statement of the issues, findings of fact, a summary of the relevant evidence, a resolution of the credibility of witnesses where there is conflicting testimony and the final determination and order. Alternatively, the decision may be issued orally at the conclusion of the hearing, so long as it is accompanied by a written decision within seven days of the hearing.
- (b) Notice of Code of Civil Procedure Section 1094.6. The written decision shall include a notice that the parties have ninety days to pursue a petition for a writ of administrative mandamus of the decision under Code of Civil Procedure Section 1094.6.
- (c) Effective. Unless otherwise provided in the Code or the hearing officer's decision, the decision shall be effective upon issuance, whether at the hearing or upon serving notice of the written decision pursuant to [Section 1-213](#).
- (d) Finality. Unless otherwise provided in the Code or the hearing officer's decision, the hearing officer's decision shall be a final agency action for purposes of writ review.
- (e) Continuing Jurisdiction to Enforce Decisions. The hearing officer may maintain continuing jurisdiction to enforce a decision and impose additional conditions or penalties as provided in [Section 1-411](#) or to take action upon direction of a court of law.

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 1-411. ENFORCEMENT OF HEARING OFFICER DECISIONS.

Upon finding a violation of an order, the hearing officer may modify the decision or order in his or her discretion or impose a sanction of up to one-thousand dollars (\$1,000.00) per violation. Any sanction imposed by the hearing officer under this section is collectable under the Cost and Penalty Recovery Ordinance (Chapter 1, Article 5) as a penalty. Alternatively, upon city staff or the hearing officer finding a

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violation of a hearing officer's order, the City Attorney may seek a modified decision from the hearing officer, pursue a civil action to enforce the order, or prosecute a criminal action under [Chapter 1](#), Article 4. Any decision modified as provided herein shall be treated as a new final decision for purposes of the requirements of [Section 1-410](#).

(Added Ord. 2005-14, § 49, eff. 4-9-05; Am. Ord. 2007-55, § 4, eff. 9-4-07).